APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT FILED DECEMBER 1, 2003

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 03-50346
Summary Calendar

SYLVIA KNOHR WYATT;
BARBARA KNOHR HURTADO,

Plaintiffs - Appellants,

versus

UNITED STATES OF AMERICA,

Defendant - Appellee.

Appeal from the United States District Court
for the Western District of Texas
USDC No. DR0-1-CV-86-OG

Before HIGGINBOTHAM, DAVIS and PRADO, Circuit Judges.

PER CURIAM:*

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* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Appendix A

Sylvia Knohr Wyatt and Barbara Knohr Hurtado appeal the district court's dismissal of their Federal Tort Claims Act (FTCA) action as time-barred. Appellants argue that the district court erred in refusing to apply equitable tolling to their claim. They argue that the court's reliance on *Houston v. United States Postal Service,* 823 F.2d 896 (5th Cir.1987) and *United States v. Kubrick,* 444 U.S. 111 (1979), for the conclusion that the statute of limitations in the FTCA is jurisdictional in nature was erroneous. They argue that the doctrine of equitable tolling applies to their case because they were prevented by affirmative and fraudulent action on the part of the defendant from making the connection between their injury and the defendant's actions. They argue that the district court erred in relying on the decision in *Hohri v. United States,* 586 F.Supp. 769 (D.D.C.1984), *affirmed,* 847 F.2d 779 (Fed.Cir.1988), in which the plaintiffs' claims arising out of their internment during WWII were held to be time-barred, because that case concerned Japanese-American internees. They argue that unlike the Japanese, they were never made aware, either through published opinions or congressional reports, that the Government had concealed its role in their ordeal, and had misrepresented the military necessity for the treatment they received. They contend that the report "Commission on Wartime Relocation and Internment of Civilians, Personal Justice Denied" (1982) did not report on the treatment of Latin Americans of German descent. They argue that the statute of limitations was tolled until 1994, when they finally discovered that the United States caused them injury, and that their action was timely filed.

Although the district court, in its order adopting the magistrate judge's recommendation, noted *Houston* and

Kubrick for the proposition that the statute of limitations in the FTCA is jurisdictional, the magistrate judge's report specifically acknowledged that equitable tolling could apply to FTCA cases, but concluded that the circumstances in this case did not justify its application. The district court found that the plaintiffs' claims accrued in 1982 when the Commission's report was published, but certainly no later than the publication of the *Hohri* decision in 1984.

The 1982 report, "Commission on Wartime Relocation and Internment of Civilians, Personal Justice Denied," in an Appendix, provides information concerning the detention and deportation of Japanese, German, and Italian internees from Latin America, including Costa Rica. The report notes that some of these internees were held at Crystal City, Texas. The plaintiffs were interned during the same period as the plaintiffs in *Hohri,* pursuant to similar policies, and were held in some of the same camps. The district court correctly ruled that a "reasonable person would have been on notice long before 1994 that the United States Government was involved in [their] detention and subsequent transfer to Germany – or would have inquired further." The district court did not abuse its discretion in deciding that equitable tolling did not apply. *Teemac v. Henderson,* 298 F.3d 452, 457 (5th Cir.2002). As a result, this Court AFFIRMS the district court's judgment.

AFFIRMED.

APPENDIX B — ORDER ACCEPTING IN PART RECOMMENDATION OF MAGISTRATE JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS, DEL RIO DIVISION FILED FEBRUARY 3, 2003

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
DEL RIO DIVISION

CAUSE NO. DR-01-CA-086-OG

SYLVIA KNOHR WYATT, and
BARBARA KNOHR-HURTADO,

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant.

ORDER ACCEPTING IN PART
RECOMMENDATION OF MAGISTRATE JUDGE

Before the Court is the supplemental report and recommendation of United States Magistrate Judge Dennis G. Green (docket no. 36), and the objections of plaintiffs.

The Court has reviewed the entire record, including Magistrate Judge Green's original report and recommendation (docket no. 19) in which he recommended that defendant's motion to dismiss be granted. The Court

agrees with Magistrate Judge Green's original recommendation that "the plaintiffs had information available to them which, if actively pursued, would have shown long before 1994 that the U.S. Government was responsible for their detention and subsequent transfer to Germany." In addition, the magistrate judge stated that: "To allow this lawsuit to proceed in the face of the obstacles noted above would require the court to ignore legal principles and statutes which it is sworn to follow. This it cannot do." The Court adopts the well-reasoned recommendation of the magistrate judge, and will grant the government's motion to dismiss on the ground that plaintiffs' claims are untimely and therefore barred by the Federal Tort Claims Act FED. R. CIV. P. 12(b)(1). The Court also notes that the time limits for filing an FTCA claim against the United States are jurisdictional and strictly construed. *Houston v. United States Postal Serv.*, 823 F.3d 896, 902 (5th Cir. 1987). *See also United States v. Kubrick*, 444 U.S. 111, 117-18 (1979).

The Court has conducted an independent review of the record, a *de novo* review of the matters raised by the objections, and has reviewed the applicable law. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b). Based on that review, it is ORDERED that:

(1) the United States' motion for reconsideration (docket no. 31) is GRANTED;

(2) the United States' motion to dismiss (docket no. 10 is GRANTED;

(3) the parties' joint motion to stay (docket no. 29) and joint motion for certification for interlocutory appeal (docket no. 31) are DENIED as moot.

SIGNED this 31 day of January, 2003.

s/ Orlando L. Garcia
Orlando L. Garcia
UNITED STATES DISTRICT JUDGE

APPENDIX C — SUPPLEMENTAL REPORT AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS, DEL RIO DIVISION FILED DECEMBER 23, 2002

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
DEL RIO DIVISION

CAUSE NO:

DR-01-CA-86-OLG/DG

Sylvia Knohr Wyatt and Barbara Maria Knohr Hurtado,

Plaintiff,

v.

United States of America,

Defendants.

SUPPLEMENTAL REPORT AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

Before the court is the parties' Joint Motion to Stay, document number 29, and the United States' Motion for Reconsideration or, in the Alternative, Joint Motion for Certification for Interlocutory Appeal, document number 31.

(1) For the reasons already stated in the undersigned's report and recommendation of July 2, 2002, document

number 19, the undersigned recommends that the parties' Joint Motion to Stay, document number 29, be GRANTED.

(2) The undersigned further recommends that the United States' Motion for Reconsideration, document number 31, be GRANTED.

(3) In the alternative, the undersigned further recommends that the parties' Joint Motion for Certification for Interlocutory Appeal, document number 31, be GRANTED.

(4) The parties may wish to file may wish to file objections to the above recommendations. Failure to file written objections to the findings and recommendations contained in this report within ten (10) days from the date of its receipt shall bar an aggrieved party from receiving a de novo review by the District Court of the findings and recommendations contained herein, *see* 28 U.S.C. § 636(b)(1)(C), and shall bar an aggrieved party "except upon grounds of plain error from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the District Court." *See Douglas v. United Services Automobile Ass'n*, 79 F.3d 1415 (5th Cir. 1996). **The Clerk of the Court shall promptly mail copies of this report to all counsel of record by certified mail, return receipt requested.**

SIGNED on this 23rd day of December, 2002.

s/ Dennis G. Green
DENNIS G. GREEN
U.S. MAGISTRATE JUDGE

APPENDIX D — ORDER DECLINING TO ACCEPT REPORT AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS, DEL RIO DIVISION FILED AUGUST 15, 2002

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
DEL RIO DIVISION

CIVIL ACTION NO. DR-01-CA-86-FB/DG

SYLVIA KNORR WYATT, and
BARBARA MARIA KNORR HURTADO,

Plaintiffs,

vs.

UNITED STATES OF AMERICA,

Defendant.

ORDER DECLINING TO ACCEPT REPORT AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

Before the Court is the Report and Recommendation of the United States Magistrate Judge (docket no. 19), plaintiffs' objections (docket no. 20), and defendant's response (docket no. 21).

Appendix D

Where no party has objected to a Magistrate Judge's Report and Recommendation, the Court. need not conduct a de novo review of the Memorandum and Recommendation. *See* 28 U.S.C. § 636(b)(1) ("A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings and recommendations to which objection is made."). In such cases, the Court need only review the Report and Recommendation and determine whether it is clearly erroneous or contrary to law. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918 (1989).

On the other hand, any Report and Recommendation to which objection has been made requires de novo review by the Court. Such a review means the Court will examine the entire record, and will make an independent assessment of the law. The Court need not, however, conduct a de novo review when the objections are frivolous, conclusive, or general in nature. *Battle v. United States Parole Comm'n*, 834 F.2d 419, 421 (5th Cir. 1987).

The Court has thoroughly analyzed the parties' submissions in light of the entire record. As required by Title 28 U.S.C. § 636(b)(1)(c), the Court has conducted an independent review of the entire record in this cause and has conducted a de *novo* review with respect to those matters raised by the objections. After due consideration, the Court concludes defendant's motion to dismiss should be denied.

Defendant argues this case should be dismissed on limitations grounds under rule 12(b)(1) of the Federal Rules of Civil Procedure. FED. R. CIV. P. 12(b)(1). Specifically, defendant contends plaintiffs had information available to

them in 1982, and certainly in 1984, which would have led a reasonable person in plaintiffs' position to inquire whether the United States government was responsible for their abduction from their homeland, internment in the United States, and subsequent deportation to Germany during World War II. The Magistrate Judge recommends the motion to dismiss be granted.

"Motions filed under rule 12(b)(1) of the Civil Rules of Federal Procedure allow a party to challenge the subject matter jurisdiction of the district court to hear a case." *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001), *cert. denied*, 112 S. Ct. 2665 (2002). Ultimately, a motion to dismiss should be granted only if it appears certain plaintiffs can prove no set of facts in support of their claims which would entitle them to relief. Id. Additionally, a court must FED. R. CIV. P. 8(f); *see also Mahone v. Addicks Utility Dist.*, 836 F.2d 921, 926 (5th Cir. 1988).

Given that it is early-on in this case, and out of an abundance of caution, this Court finds it does not appear certain that plaintiffs can prove no set of facts in support of their limitations argument. Plaintiffs were children in 1942 when they were forced from their home by Costa Rican military personnel, confined aboard a military vessel in deplorable conditions, transferred to the United States, held in Crystal City, Texas, for approximately one year, then removed to Germany, where they were exchanged for American civilians trapped by the war. The 1982 report issued by the Commission on Wartime Relocation and Internment focused primarily on the internment of American citizens of Japanese ancestry. Plaintiffs, who were not Americans at the time of their release, were of a different race and nationality

than the subjects upon which the report focused. The *Hohri* case, which referenced the report, was brought by Japanese-American detainees and addressed race-based wrongs committed against American civilians, living in America, detained in America by Americans, pursuant to a widely-publicized executive order. *Hohri v. United States*, 586 F. Supp. 769 (D.D.C. 1984), *aff'd in part & rev'd in part*, 782 F.2d 227 (D.C. Cir. 1986), *vacated with instructions to transfer*, 482 U.S. 64 (1987). Here, plaintiffs were citizens of Costa Rica—children living in their own country—when they were arrested by the military, detained in a foreign country, and subsequently exchanged for American civilians in Germany, as part of a "top secret" or "classified" operation of the United States government. Based upon the nature and circumstances of plaintiffs' injuries, to do substantial justice the motion to dismiss is denied.

IT IS THEREFORE ORDERED that the Report and Recommendation of the United States Magistrate Judge (docket no. 19) is DECLINED pursuant to 28 U.S.C. § 636(b)(1) such that the rule 12(b)(1) motion to dismiss (docket no. 10), filed on April 19, 2002, by defendant United States of America is DENIED. The above-styled and numbered cause remains referred to the Magistrate Judge for pretrial proceedings.

It is so ORDERED.

SIGNED this 13th day of August, 2002.

s/ Fred Biery
FRED BIERY
UNITED STATES DISTRICT JUDGE

APPENDIX E — REPORT AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS, DEL RIO DIVISION FILED JULY 2, 2002

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
DEL RIO DIVISION

CAUSE NO:
DR-01-CA-86-FB/DG

Sylvia Knohr Wyatt and
Barbara Maria Knohr Hurtado,

Plaintiff,

v.

United States of America,

Defendants.

REPORT AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

Before the court is Rule 12(b)(1) motion to dismiss filed on April 19, 2002, by Defendant United States of America. This Report and Recommendation is submitted to the court pursuant to 28 U.S.C. § 636(b)(1). After reviewing the defendant's motion and the response filed by the plaintiffs, the undersigned recommends that the motion be granted and the case dismissed.

Appendix E

Background and Procedural History

The plaintiffs claim that at all pertinent times they were Costa Rican nationals, whose parents were also Costa Rican. The plaintiffs' father, Erwin Rafael Knohr, was born and raised in Costa Rica and his mother's family, according to the plaintiff's complaint, "had been in Costa Rica for many generations." The plaintiffs claim that in 1942, "with little or no warning," they were forcibly taken from their home in Costa Rica by military personnel and placed in a vessel, which they believed to be a troop ship, taken to San Francisco, California, where they were told they were being provided assistance by the American Red Cross, and later taken by train to an internment camp in Crystal City, Texas, where they were confined for approximately one year. The plaintiffs were eventually shipped to Germany and exchanged for U.S. prisoners being held in Germany, presumably because of the German heritage of the plaintiffs' father. The plaintiffs also claim that although they were able to return to Costa Rica after the war in Germany ended, it took them nearly three years to do so and that they did not reach Costa Rica until sometime in 1948. Furthermore, when the plaintiffs returned to Costa Rica they discovered that their property and personal belongings had been confiscated or destroyed.

While these events were occurring and for over fifty years thereafter, the plaintiffs claim they were not aware of the U.S. Government's role in their arrest and detention because they were told that "they were being protected by the Red Cross and the United States Government." The plaintiffs also allege that they did not learn that the United States

Government was ultimately responsible for their arrest, detention and subsequent transfer to Germany

> until one of their family members saw the [NBC] television program Date Line, on or about November 30, 1994, which program revealed to petitioners through a documentary film that the United States government had not been protecting them. Instead, the television program showed that the United States government though the United States Army planned, developed and carried out this plot which deprived petitioners of their legal rights.

Apparently prompted by the television program, the plaintiffs filed this lawsuit seeking compensation for loss of liberty, loss of property, personal injury, and mental injury.

Discussion

Motions filed under Rule 12(b)(1) of the Federal Rules of Civil Procedure challenge they subject matter jurisdiction of the federal district court. *See* FED. R. CIV. P.12(b)(1). In examining a Rule 12(b)(1) motion like the one filed by the Government, the court is authorized to consider disputed facts as well as undisputed facts in the record. *See Clark v. Tarrant County,* 798 F.2d 736, 741 (5th Cir. 1986); *Williamson v. Tucker*, 645 F.2d 404, 413 (5th Cir. 1981). Ultimately, however, a motion to dismiss for lack of subject matter jurisdiction should be granted only if it appears certain that the plaintiff cannot prove any set of facts in support of his

claim that would entitle the plaintiff to relief. *Home Builders Assn. of Miss., Inc. v. City of Madison, Miss.*, 143 F.3d 1006, 1010 (5th Cir. 1998).

The defendant argues that the plaintiffs' complaint should be dismissed because their claims are untimely and therefore barred under the Federal Tort Claims Act, or FTCA. The FTCA mandates that

> [a] tort claim against the United States shall be forever barred unless it is presented in writing to the appropriate Federal agency within two years after such claim accrues or unless action is begun within six months after the date of mailing . . . of notice of final denial of the claim by the agency to which it was presented.

28 U.S.C. § 2401(b). "Although phrased in the disjunctive, 'this statute requires a claimant to file an administrative claim within two years [of accrual] and file suit within six months of its denial.'" *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001) (quoting *Houston v. United States Postal Serv.*, 823 F.2d 896, 902 (5th Cir. 1987)). "A cause of action under federal law accrues within the meaning of § 2401 (b) 'when the plaintiff knows or has reason to know of the injury which is the basis of the action.'" *Ramming*, 281 F.3d at 163 (quoting *Brown v. Nationsbank Corp.*, 188 F.3d 579, 589-90 (5th Cir. 1999) (internal quotes and citations omitted)). In FTCA cases,

> [a] plaintiff . . . armed with the facts about the harm done to him, can protect himself by seeking

> advice in the medical and legal community. To excuse him from promptly doing so by postponing the accrual of his claim would undermine the purpose of the limitations statute, which is to require the reasonably diligent presentation of tort claims against the Government.

United States v. Kubrick, 444 U.S. 111, 123 (1979). It is well established that the FTCA limitations period is a jurisdictional prerequisite. *See Flory v. United States,* 138 F.3d 157, 159 (5th Cir. 1998). In the present case, the threshold issue is determining when the plaintiffs' claim accrued. Given the nature of the plaintiffs' alleged claims and injuries, *i.e.*, that they were forcibly brought to the United States from Costa Rica in 1942, held in an internment camp at Crystal City, Texas, for approximately one year, and subsequently "shipped to Germany where the United States exchanged them for U.S. civilian prisoners," the plaintiffs' contention that they had no knowledge of the U.S. Government's role in their detention and subsequent transfer to Germany until 1994 is simply not credible. A reasonable person would have been on notice long before 1994 that the United States Government was involved in the plaintiffs' detention and subsequent transfer to Germany – or would have inquired further. *See Gonzalez v. United States,* 284 F.3d 281, 289 (1st Cir. 2002) ("The standard is an objective one."). As explained in the Government's brief, information about the United States' role in the internment and deportation of Latin Americans of enemy nationalities was available long before 1994. The Commission on Wartime Relocation and Internment of Civilians report in 1982, for example, while

focusing primarily on the internment of Japanese Americans, also addressed the treatment of persons in the plaintiffs' position, *i.e.*, persons of enemy nationalities who resided in Latin American countries and were used for prisoner exchanges during the Second World War. Furthermore, this report was cited by both the district and appellate courts in the *Hohri* litigation. *See Hohri v. United States,* 586 F.Supp. 769 (D.D.C. 1984), *aff'd in part and rev'd in part,* 782 F.2d 227 (D.C. Cir. 1986), *reh'g en banc denied,* 793 F.2d 304 (D.C. Cir. 1987), *vacated with instructions to transfer,* 482 U.S. 64 (1987), *aff'd on remand,* 847 F.2d 779 (Fed. Cir. 1988), *cert. denied,* 488 U.S. 925 (1988).[1]

But regardless of whether the plaintiffs had actual knowledge of the U.S. Government's role before they saw the NBC program *Date Line* in 1994, the court finds that the plaintiffs' claims accrued when this information became public in 1982, and certainly no later than the *Hohri* decision in 1984, since an objectively reasonable person would have known to inquire by that time, if not earlier. *See Garza v. United States Bureau of Prisons,* 284 F.3d 930, 935 (8th Cir.

1. *Hohri* was a lawsuit brought in the 1980s by Japanese American former internees for monetary damages and declaratory judgment relief. The district court concluded that all of the plaintiffs' claims were barred either by sovereign immunity or the applicable statute of limitations – a decision which was eventually affirmed and adopted by the court of appeals. *See* 847 F.2d 779. It should be noted that the plaintiffs' attempt in the case at bar to distinguish *Hohri* based on the ethnicity of the plaintiffs in that case is highly unpersuasive at best. The plaintiffs here were interned during the same time period as the *Hohri* plaintiffs, pursuant to the same or similar wartime policies, and were even held in some of the same internment camps as the *Hohri* plaintiffs.

2002) ("a plaintiff's assertion of when he gained actual knowledge is not determinative if he did not act reasonably and, 'in effect, closed [his] eyes to evident and objective facts concerning accrual of [his] right to sue.'") (quoting *Chrysler Workers Ass'n v. Chrysler Corp.*, 834 F.2d 573, 579 (6th Cir. 1987)); *Ramming*, 281 F.3d at 163 (plaintiffs' claim was time barred because he "did not conduct an inquiry, diligent or otherwise, even though [he] knew or had reason to know of the injury forming the basis of a possible" cause of action long before the limitations period expired). Although it is difficult to pinpoint the precise accrual date, there is no question that the plaintiffs' claims are untimely. This is true despite the plaintiffs' claims of ignorance, for the accrual of a cause of action cannot be delayed until a third party informs an apparently uninformed plaintiff that he may have a claim. *See Bradley v. United States*, 951 F.2d 268, 271 (10th Cir. 1991) ("To allow Plaintiff to postpone accrual until he is passively informed by an outside source that his injury was negligently inflicted would serve to undermine the purpose of the limitations statute, that claims against the government require diligent presentation."). To do so would effectively rewrite § 2401(b) so as to defeat its obvious purpose of encouraging the prompt presentation of claims. *Kubrick*, 444 U.S. at 118. That the plaintiffs were minors during their detention does not alter this analysis, since "the limitations period [under the FTCA] is not tolled during the minority of the putative plaintiff; rather 'his parent's knowledge of the injuries is imputed to him'" *MacMillan v. United States*, 46 F.3d 377, 381 (5th Cir. 1995).

Appendix E

The plaintiffs also argue in their response that the doctrine of equitable tolling should apply to save their otherwise untimely claims. Although it is true that principles of equitable tolling apply to the statute of limitations under the FTCA, *Perez v. United States*, 167 F.3d 913, 917 (5th Cir. 1999), the plaintiffs' circumstances do not justify their use. *See id.* at 919 (holding that equitable tolling "is not [a doctrine] that trial courts have discretion to use whenever they please . . . [because] [s]tatutes of limitations serve a vital role in blocking stale claims"). In *Irwin v. Department of Veterans Affairs*, 498 U.S. 89, 111 S.Ct. 453, 458 (1990), the Supreme Court held that equitable tolling is permissible

> where the claimant has actively pursued his judicial remedies by filing a defective pleading during the statutory period, or where the complainant has been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass. We have generally been much less forgiving in receiving late filings where the claimant failed to exercise due diligence in preserving his legal rights.

In this case, there is no indication that the plaintiffs attempted to pursue any judicial remedies prior to 1994, nor is there any indication that the United States somehow "induced or tricked" them into allowing the limitations period to pass. On the contrary, the record indicates that the plaintiffs had information available to them which, if actively pursued, would have shown long before 1994 that the U.S. Government was responsible for their detention and subsequent transfer to Germany. There can be no equitable tolling of the section 2401(b) limitations period under such circumstances.

Appendix E

Conclusion

However much the court is appalled by the plaintiffs' wartime detention and the policies which caused it, the fact remains that they simply waited too long to file this suit. As the district court noted in the *Hohri* decision:

> This ruling is not a fresh appraisal of the merits of the wartime decision, based on what now appears to be a questionable rationale of military necessity, to intern 120,000 citizens and residents because of their race. It may be that timely claims on their behalf would have prevailed. But it is now close to forty years after the camps were closed, and almost that long after the facts essential to those claims were published. Much time has passed, memories have dimmed, and many of the actors have died. These concerns are reflected in the statutes of limitation, and it is those statutes which present the ultimate bar to plaintiffs' claims.

586 F.Supp. at 794. Such is also the case here. To allow this lawsuit to proceed in the face of the obstacles noted above would require the court to ignore legal principles and statutes which it is sworn to follow. This it cannot do.

Recommendation

(1) The Rule 12(b)(1) motion to dismiss filed on April 19, 2002, by Defendant United States of America should be **GRANTED** and this case should be **DISMISSED**.

(2) The parties may wish to file may wish to file objections to the above recommendations. Failure to file written objections to the findings and recommendations contained in this report within ten (10) days from the date of its receipt shall bar an aggrieved party from receiving a de novo review by the District Court of the findings and recommendations contained herein, *see* 28 U.S.C. § 636(b)(1)(C), and shall bar an aggrieved party "except upon grounds of plain error from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the District Court." *See Douglas v. United Services Automobile Ass'n*, 79 F.3d 1415 (5th Cir. 1996). The Clerk shall mail copies of this report to the parties, return receipt requested.

SIGNED on this 2nd day of July, 2002.

s/ Dennis G. Green
DENNIS G. GREEN
U.S. MAGISTRATE JUDGE

APPENDIX F — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT DENYING PETITION FOR REHEARING FILED FEBRUARY 2, 2004

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 03-50346

SYLVIA KNOHR WYATT;
BARBARA KNOHR-HURTADO

Plaintiffs - Appellants

v.

UNITED STATES OF AMERICA

Defendant - Appellee

Appeal from the United States District Court for the Western District of Texas, Del Rio

ON PETITION FOR REHEARING

Before HIGGINBOTHAM, DAVIS, and PRADO, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing is DENIED

Appendix F

ENTERED FOR THE COURT:

s/ Edward C. Prado
United States Circuit Judge